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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/540,716

06/10/2005

John E Walls

VMAFriUSNP

2484

39208

7590

06/23/2009

CR MILES, P.C.

CRAIG R. MILES

405 MASON COURT, SUITE 119

FORT COLLINS, CO 80524

EXAMINER

THOMAS, TIMOTHY P

ART UNIT

PAPER NUMBER

1614

MAIL DATE

DELIVERY MODE

06/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/540,716	Applicant(s) WALLS ET AL.	
	Examiner TIMOTHY P. THOMAS	Art Unit 1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,32,33,37-39,45-52 and 58-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1,2,32,33,37-39,45-52 and 58-66 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

REQUIREMENT FOR UNITY OF INVENTION

1. As provided in 37 CFR 1.475(a), a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in a national stage application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim. See 37 CFR 1.475(e).

When Claims Are Directed to Multiple Categories of Inventions:

As provided in 37 CFR 1.475(b), a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

- (1) A product and a process specially adapted for the manufacture of said product; or
- (2) A product and process of use of said product; or

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(3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or

(4) A process and an apparatus or means specifically designed for carrying out the said process; or

(5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process.

Otherwise, unity of invention might not be present. See 37 CFR 1.475(c).

Election/Restrictions

2. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Applicant is required to elect for each of the following:

(i) a capsule wall thickness specie (claim 32), elected from claim 37 or 38;

(ii) a capsule size specie (claim 33), elected from claim 47 or 48;

(iii) a perceivable sensorial indicia specie, elected from the species recited in claims 49 or 58;

(iv) a discrete event specie, elected from the species recited in claims 50 or 51; if claim 51 is elected, also elect

(iv-a) a time duration specie, elected from the species recited in claim 45, 46 or 52;

(v) each compound specie present in a single disclosed composition; elect each component present from the compounds recited in claims 39 and 61-66.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

3. The claims are deemed to correspond to the species listed above in the following manner:

- (i) claims 32, 37, 38;
- (ii) claims 33, 47, 48;
- (iii) claims 49, 58;
- (iv) claims 50-51, 45, 46, 52;
- (v) claims 39, 61-66

The following claim(s) are generic: claims 1-2, 32-33, 39, 45-52; 58-66 are generic for (i); claims 1-2, 32-33, 37-39, 45-6, 49-52; 58-66 are generic for (ii); claims 1-2, 32-33,

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37-39, 45-48, 50-52; 59-66 are generic for (iii); claims 1-2, 32-33, 37-39, 45-49, 52; 58-66 are generic for (iv); claims 1-2, 32-33, 37-39, 45-52; 58-65 are generic for (v).

4. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons:

The species lack unity of invention because even though the inventions of these groups require the technical feature of the composition of claim 1, this technical feature is not a special technical feature as it does not make a contribution over the prior art in view of Schnoring et al. (US 4,402,856; 1983). Schnoring teaches microcapsules (a plurality of capsules) having a defined release temperature; the microcapsules are formed of gelatin or mixtures including gelatin (abstract); core materials can be used in washing agents and bath additives, as particularly preferred embodiments (col. 2, lines 42-49); examples of components that may be microencapsulated include perfume oils, disinfectants and detergent additives (col. 3, lines 62-66); the microcapsules release their core material in the presence of water of aqueous solutions in a defined, narrow temperature range, which can be adjusted within a relatively wide range (satisfies the aqueous carrier requirement of the composition, demonstrates an adjustable capsule rupture characteristic or a specific temperature; col. 5, lines 25-31); the use of a perfume, for example, would be a sensorial indicia (smell); example 1 included a blue dye which was used to determine the amount released (a perceivable sensorial indicia; col. 7, line 54-col. 8, line 7); specific amounts of materials are taught (see for example, Tables 2-3, columns 9-10), which satisfy the "amount of material" contained in a

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capsule; a specific temperature achieved where the material is released would satisfy the release of material at the occurrence of a discrete event. Therefore Schnoring anticipates claim 1. According the species are not so linked by the same or a corresponding special technical feature as to form a single general inventive concept.

5. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TIMOTHY P. THOMAS whose telephone number is (571)272-8994. The examiner can normally be reached on Monday-Thursday 6:30 a.m. - 5:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on (571) 272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Timothy P Thomas/
Examiner, Art Unit 1614

/Ardin Marschel/
Supervisory Patent Examiner, Art Unit 1614